

P&Z MEETING MINUTES

June 20, 2007

PLANNING & ZONING COMMISSION/BOARD OF ADJUSTMENT

JUNE 20, 2007

The meeting was called to order at 7:30 p.m. by Chairman Donald F. Neizer. Commissioners present were A. Temple Carter, Tina M. Smith, Rodney A. Slaughter, Robert P. Newnam, and Keith Faulkner.

Also present were Manager of Planning & Zoning Janet L. Vinc, Chief John L. Embert III, Town Solicitor Erika Schrader, and Recording Secretary Valerie L. Heritage.

Commissioner Neizer led the Pledge of Allegiance. Commissioner Neizer asked for a moment of silence for many, many things that have happened over the week, not only our troops but for the firemen that lost their lives. He said that was a tragic thing that happened in the Carolinas. Commissioner Neizer said maybe a minute to reminisce and think about our Council, our new Mayor, and our Town.

RECOGNITION OF VISITORS

Visitors present were Pat Stombaugh, Trink McMillan, Helen Schelts, David Braun, Grace Ennis, Ron Marcum, Terry A. Foley, and Steve Cahall.

Commissioner Neizer stated he is glad everyone came this evening. He said that this, recognition of visitors, is the time for visitors wishing to speak on non-agenda items to come forward to speak. Commissioner Neizer asked that those individuals wishing to speak to come to the microphone and speak into the microphone. He said if anyone needs more than three minutes to speak that is fine.

Pat Stombaugh, 25 Raphael Road, Smyrna came forward to speak. Ms. Stombaugh said this is unofficial but she wanted to give some kind of explanation to try to help everyone understand a little bit. She said she was

really happy to see Ms. Schrader here tonight. Ms. Stombaugh stated she has been to quite a few of the Planning and Zoning and Board of Adjustment meetings where there was no legal counsel and this has been a big concern of hers. She said she hopes there will be legal counsel at these meetings in the future because she thinks it is very important. Ms. Stombaugh stated she wanted to explain why she had asked for the Planning and Zoning Commission, and the Board of Adjustment to be separated. She said she had talked at length with the town's legal counsel. Ms. Stombaugh said they advised her that most towns, and that it was a good idea to, have the committees separate. She said they actually do two different functions and although they are similar, they are different. Ms. Stombaugh said that when you are acting in both capacities you are wearing one hat and when it flips over to the other committee you are actually flipping hats. She said the other thing is if someone comes before Planning and Zoning and you tell them no, the next recourse is to go before the Board of Adjustment. Ms. Stombaugh said basically that person is going back to the same people that told them no. She said this is why she asked for the two committees to be separated. Ms. Stombaugh stated this is when she found out that the Commissioners' term expiration dates are staggered between the two committees, meaning that if your term expires on the Planning and Zoning Commission it may still be active on the Board of Adjustment. She said she could not legally tell the Commissioners that she was going to replace everyone on one or the other committee because the Commissioners have the right to complete their terms. Ms. Stombaugh stated that she did go to the Commission and ask them if they would consider choosing one of the committees and if they would resign from one of the committees, because of what she was advised by legal counsel. She said she was advised by legal counsel that there were only two ways she could do this: 1) replace the Commissioners as their term expired, or 2) ask the Commissioners to resign from one of the committees. Ms. Stombaugh said she assumed that none of the Commissioners wanted to resign from one of the committees because she did not get an answer back.

Commissioner Slaughter stated that he did not remember having this conversation with Ms. Stombaugh. Ms. Stombaugh stated that they were all together after one of the hearings. Commissioner Slaughter asked the other Commissioners if they recalled the conversation. Commissioner Carter said no, and Commissioner Smith stated she had never been asked.

Commissioner Slaughter stated that he wanted to respond by saying that he actually supports the separation of the two bodies. He said he feels it is not only a benefit to the community but to the applicant that may not live in our community. Commissioner Slaughter said however at the same time he feels that workshops could have taken place prior to a legal decision being made, because there are other legal decisions to be made as well. He said in the future it is important that those bodies come together and decisions be made then. Commissioner Slaughter said it did not matter whether it was a workshop or a town meeting, if they have time to sit here tonight then they have time to attend another meeting. He said that with Ms. Stombaugh's role as mayor communication is important. Commissioner Slaughter said it is the key to a town being successful and determine what people may or may not think.

Ms. Stombaugh stated that she appreciated what Commissioner Slaughter said. She said she is very open to suggestions. Ms. Stombaugh said a lot of things have changed since she sat on council 25 years ago and there are things that she is learning. She said it was difficult to not keep Commissioner Slaughter on both committees because she has attended these meetings and she feels that Commissioner Slaughter has done an outstanding job. Ms. Stombaugh said she feels Commissioner Slaughter understands, and with regards to ethics Commissioner Slaughter has always recused himself from any agenda item that he was involved with. Ms. Stombaugh stated that it absolutely has nothing personal to do with Commissioner Slaughter or Commissioner Carter as to why she did not reappoint them. She said she realizes now that it probably would have been better to do a letter, but she was following, kind of, prompts from other people in the beginning. Ms. Stombaugh stated she would like to commend Commissioners Slaughter and Carter for the time that they have put in, it is very time consuming and it is not an easy job for being a volunteer and serving your community.

ADDITIONS/DELETIONS TO PUBLISHED AGENDA

Commissioner Smith made the motion to accept the agenda as presented. Motion was seconded by Commissioner Carter.

Commissioner Newnam stated he would like sometime to discuss the ground

rules. Commissioner Faulkner stated that he has the same concern, which is we have combined both meetings. He said this is a Board of Adjustment meeting, but yet we are voting on an agenda that is not just for the Board of Adjustment. Commissioner Neizer stated that as far as the published agenda goes the Commissioners just have to agree or disagree no matter whether they are on the Planning and Zoning Commission or the Board of Adjustment. Commissioner Faulkner asked where that would put them legally. Ms. Schrader stated the title of the agenda is for the Planning and Zoning Commission and the Board of Adjustment, therefore it is a joint meeting and all Commissioners can vote on the agenda.

Commissioner Newnam said thank you for clarifying this for the record. He said that when it comes to the discussion of agenda items it is his understanding that all of the Commissioners will be able to have input, but when it comes time to vote only the members of the Planning and Zoning Commission or the Board of Adjustment, whichever applies, will be permitted to vote.

Ms. Schrader clarified that Commissioner Neizer's position is that he would like everyone, on both bodies, to contribute to the discussion on all of the agenda items whether they fall under the Board of Adjustment or the Planning Commission. However, if you are not an appointed member of one of those bodies your participation in the discussion would be equal to a citizen from the floor commenting on the matter. She said it is also correct that only members of the pertinent body, whether it is Board of Adjustment or Planning Commission, may vote.

Commissioner Newnam stated that he applauded the Chairman and that he believes there will be some valuable input, however his concern with this is there is an issue this evening that needs to be addressed by the Board of Adjustment. Commissioner Newnam said he wants to participate in Planning and Zoning issues however a subdivision came before the Planning and Zoning Commission and the Commission sent it back to be reworked to narrow down the variance requirements, which the Commission knew would be coming back to them as the Board of Adjustment for the variances. Commissioner Newnam asked if he should participate in the discussion of an agenda item such as this if he knew it would be coming back before him for variance requests, since he is a member of the Board of Adjustment. He said

he would probably recuse himself on an issue that he knew may come back to the Board of Adjustment because he would be giving input for a decision he would be making at a later date.

Commissioner Carter said he would like to ask that the remaining members of the Board of Adjustment that are also on the Planning Commission reconsider their thoughts of stepping down so that we can actually form two separate bodies. Commissioners Smith and Neizer stated that they agreed.

Commissioner Slaughter stated that maybe we need to look at setting a date to have a meeting with the current Board for their interests, not only today but five or ten years from now, so we can get a plan. He said plans are built on a long time frame not just tonight or tomorrow. Commissioner Slaughter said this would give everyone a chance to put their thoughts together as well as for the Mayor to put her thoughts together on her committees and what her direction is. He said perhaps at that point those individuals can meet again and maybe put a plan together for the two bodies. Commissioner Slaughter stated that he would like to ask Ms. Vinc to set up this meeting as soon as possible.

Commissioner Neizer asked Ms. Schrader for her feelings about this. Ms. Schrader stated her feeling is that it is best if there are two separate bodies as soon as possible rather than waiting for each Commissioner's term to expire. She said that everyone has to be in agreement and that it would not work if you had one holdout.

Ms. Stombaugh stated when the Commissioners have their meeting they can choose whichever body they wished to serve on.

The motion carried unanimously.

MINUTES FROM PREVIOUS MEETING

Commissioner Carter made the motion to approve the minutes from the meeting of May 16, 2007. Motion was seconded by Commissioner Slaughter and carried unanimously.

Commissioner Neizer welcomed Commissioners Faulkner and Newnam.

Commissioner Neizer stated that he would like to praise the performance of Commissioners Slaughter and Carter for their past work. He said personally he wanted to say thank you for supporting the Commission and the Town. Commissioner Neizer said the Town has come a long way over the years because he really felt the Town was dying back when.

Commissioner Slaughter stated he just wanted to say thank you to Commissioner Neizer for his comments. Commissioner Slaughter said that we all prevail from leaders and Commissioner Neizer has done a good job.

Commissioner Smith made the motion to open the Board of Adjustment public hearing at 7:54 p.m. Motion was seconded by Commissioner Slaughter. Motion passed with Commissioners Smith, Slaughter, Newnam, and Neizer voting for.

BOARD OF ADJUSTMENT

VARIANCE

A. Cahall Investments, LLC, A0703, West Mount Vernon Street and Greenbrier Street, DC-17-009.20-02-38.00-000 (attachment A)

Ms. Vinc read the information from the planning report from staff. In R-2A, Medium Density Residential Zoning Districts, the minimum lot depth per attached dwelling unit is 110 feet and the minimum lot area per unit is 1500 square feet. The applicant is requesting four (4) variances: 1) Lot 1 – The applicant is requesting an 18.38 foot variance from the required 110 foot lot depth. Granting of this variance would create a lot depth of +/- 91 feet. The square footage for lot 1 is 3,444 square feet, +/- 1,944 square feet more than what is required per Town Code. The square footage of this proposed lot more than doubles the required minimum square footage. 2) Lot 2 – The applicant is requesting an 11.78 foot variance from the required 110 foot lot depth. Granting of this variance would create a lot depth of +/- 98.1 feet. The square footage of this proposed lot is 2,113 square feet, +/- 613 more than what is required per Town Code. 3) Lot 3 – The applicant is requesting a 7.5 foot variance to the required 110 foot lot depth. Granting of this

variance would create a lot depth of +/- 102.5 feet. The square footage of this proposed lot is 2,207 square feet, +/- 707 square feet more than what is required per Town Code. 4) Lot 4 – The applicant is requesting a 3.21 foot variance from the required 110 foot lot depth. Granting of this variance would create a lot depth of +/- 106.79 feet. The square footage of this proposed lot is 2,302 square feet, +/- 802 square feet more than what is required per Town Code.

At their meeting on February 21, 2007, the Planning and Zoning Commission tabled this subdivision application as submitted with a recommendation that the applicant carefully review the Town Engineer's comments and revise the plan to reflect the Town Engineer's recommendations, particularly the need for seven (7) variances.

The applicant came back before the Planning and Zoning Commission at their meeting on March 21, 2007, complying with the recommendations of the Commission. The Commission unanimously recommended approval of the subdivision plan (contingent upon approval of the four (4) variances) to Mayor and Council. At their meeting on May 7, 2007, Mayor and Council approved this subdivision application as submitted. Please note, the applicant has removed five (5) feet from each of the affected lots to allow for a fifty (50) foot wide access road to accommodate emergency vehicles. Based on these facts, the Board of Adjustment shall make a finding that the reasons set forth in this application justify the granting of the variances, and that the variances are the minimum variances that will make possible the reasonable use of the land. Furthermore, the Board of Adjustment shall find that the granting of these variances will be in harmony with the general purpose and intent of this ordinance, and will not be detrimental to the neighborhood or to public welfare. No written objections or concerns were received by staff and staff has no objections to the request.

Commissioner Neizer asked if there was anyone present to speak for the variance requests. David Braun, Braun Engineering and Surveying, 429 South Governors Avenue, Dover came forward to speak. Mr. Braun stated the request is for four (4) variances on the four (4) lots closest to Mount Vernon Street. He said the entire property size is approximately 1.5 acres. Mr. Braun stated that as Ms. Vinc had summarized their first submission used a portion of Turner's Row for frontage for some lots which required

more variances than what everyone was comfortable with. He said after the application was tabled they met with Town staff and came up with a couple of alternatives which led to the current design. Mr. Braun stated that due to the shape of the property the first approximately 100 feet of the site back from Mount Vernon Street does not have the required 110 foot lot depth that is required by the Town's Code. He said the frontage on Mount Vernon Street is about 92 feet. Mr. Braun said they have taken five (5) additional feet off of that to show a 50 foot right-of-way which is the current Town requirement for minor streets for access. He said rather than asking for a variance to the required 50 right-of-way they provided the five (5) feet which creates one additional lot that does not have the required 110 foot lot depth. Mr. Braun stated that the lots have the required area. He said the application for the variances includes the list of items from the Code that the applicant is supposed to address as part of their application. Mr. Braun stated the Town Code says that a variance shall not be considered by the Board until written answers are completed to the below questions: 1) that special conditions or exceptional practical difficulties exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district – the response goes back to the fact that this property is only 92 feet wide (between Greenbrier Street and the rear property line) in its current shape. Mr. Braun said this property has been in this shape since at least the original plans that they can find which are dated 1942; 2) that literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Ordinance – the response has to do with the fact that they cannot get access to Mount Vernon Street. Mr. Braun stated that the frontage of the lots has to be on the subdivision street, based on their discussions with the Town; 3) that the special conditions and circumstances do not result from the actions of the applicant – the response is that this property has been in this shape since at least 1942 when the original lots were recorded; and 4) that granting of the variance will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures or buildings in the same zoning district – the response is that the granting of these variances allows this property to be developed in a way that they believe everybody meant it to be. Mr. Braun said if these variances are not granted here the front approximately 100 feet of the development will not be useable - that is it would remove all use under the residential zoning district.

Commissioner Neizer asked what the applicant would do if the variance request for lot 1 was denied. Mr. Braun stated that he was not sure – it could be combined with lot 2 to create a really wide lot or it could be left as an area of undeveloped grass. Either way it would be a non-conforming building lot.

Commissioner Neizer asked if there were any questions from the Commissioners. Commissioner Faulkner asked for clarification of the terms property and lots in the response to the third question on the variance application. Mr. Braun stated that when this area was originally recorded there were 50 wide lots through the whole area. He said those lots do not meet the current requirements for lot depth.

Commissioner Neizer asked if there would be any parking on the right side of the cul-de-sac. Mr. Braun stated there is not supposed to be any parking inside a cul-de-sac, period. He said this is a requirement by the Fire Marshal. Commissioner Carter said however none of them are so posted. Commissioner Neizer said if they were posted then they would not have a problem. Commissioner Slaughter said they would have a ticket.

Commissioner Slaughter asked for clarification that the applicant had met with the Planning Department about the variances themselves. Mr. Braun stated that is correct. Commissioner Slaughter clarified that with the past meeting they had the Commission had asked for some changes, and those changes were made. Mr. Braun said that is correct. Mr. Braun stated that the initial plan they had submitted would have required seven (7) variances. He said after meeting with staff and developing this plan they felt they could support the request for the four (4) variances.

Commissioner Newnam asked for clarification of the lot depth for lot 5 listed on the plan. Mr. Braun explained that the lot depth for lot 5 is over 110 feet as per the calculations per Town Code. He said it takes the two sides and averages them.

Ron Marcum, 1409 Brenford Road, Dover came forward to speak. Mr. Marcum stated his family on his wife's side has three (3) duplexes located in the same vicinity. He said when he first purchased this property it was in

two (2) lots and it was zoned Manufacturing. Mr. Marcum stated he bought it out of concern for his family's properties in the area. He said at one time he had decided to build seven (7) duplexes on the property, which created a problem – the requirement of seven (7) variances. Mr. Marcum said he stayed in touch with the people that live in the area and showed them the different plans as they went along. He said he met with the town manager, the town planner, the head of the water department, the head of the electric department, and tried to work with everybody the best that he could. Mr. Marcum stated that as a result he tried five (5) different layouts; the first one was presented in August of 2005. He said this is an odd shaped lot, which is the way he bought it and that is the way it has been for ages. Mr. Marcum stated that his family owns the lots that adjoin this property where the variances are being requested. He said he has a letter from his mother-in-law in favor of these variance requests. Mr. Marcum stated that he has been taking care of this property just like all of the other properties his family owns for years.

Commissioner Slaughter asked if Mr. Marcum approached the Town, or did the Town approach Mr. Marcum about changing the zoning from Manufacturing to Residential. Mr. Marcum stated that he received a phone call from Stevie Lee who asked if Mr. Marcum would stop into Town Hall and meet with him. Mr. Marcum stated he did and that Mr. Lee had said that we are very interested in taking it out of Manufacturing and we would like to give you Residential zoning of your choice. Commissioner Neizer stated for the record that Mr. Lee had been the Director of Planning and Inspections at the time. Mr. Marcum stated that is correct. Mr. Marcum said that Jimmy Fox in the Building Department had come into the room where Mr. Marcum and Mr. Lee were meeting. Mr. Marcum stated that Mr. Fox was also very adamant that the zoning be taken out of Manufacturing because it was a very dangerous classification and they felt that the Manufacturing zoning classification belonged in industrial parks. Mr. Marcum said they had offered him any Residential zoning that he wanted. He said he could have gone with R-3, but went with R-2A instead. Mr. Marcum stated that is was in the Comprehensive Plan to have this property zoned Residential.

Commissioner Newnam asked Mr. Marcum to submit the letter from his mother-in-law as part of his testimony. Mr. Marcum submitted the letter.

Steve Cahall, 2284 Bryn Zion Road, Smyrna came forward to speak. Mr. Cahall stated that he was here to speak for the variance requests. He said that while they do not meet the lot depth requirements, they do meet the minimum square footage requirements for all of the lots. Mr. Cahall stated that they are going to do a nice job, nothing shabby.

Commissioner Neizer asked when and if this is approved would there be a homeowners association. Mr. Cahall stated yes there would be a homeowners association.

Commissioner Neizer asked if there was anyone else to speak for the variance requests. No one came forward.

Commissioner Neizer asked if there was anyone present to speak against the variance requests. Grace Ennis, 522 Smyrna-Clayton Boulevard, Smyrna came forward to speak. Mrs. Ennis stated she appreciates everything Mr. Marcum has done. She said she does have a concern and that is she does not feel the housing density could get any denser. Mrs. Ennis said the plan that was presented in February only had 11 townhouses along the entrance. She said the current plan now has 13 townhouses. Mrs. Ennis said consequently they have the first two (2) lots that require big variances. She said maybe it would not hurt to have a little open space. Mrs. Ennis stated that there is a little bit of concern with the three (3) roads coming together by the entrance to this property. She said there is Turner's Row, Greenbrier Street, and Mount Vernon Street all aimed for Smyrna-Clayton Boulevard. Ms. Vinc stated that the subdivision must have DelDOT approval before it can be recorded.

Trink McMillan, 125 North High Street, Smyrna came forward to speak. Ms. McMillan stated her concern is primarily the first lot. She said an 18 foot variance is extreme. Ms. McMillan said that even though it does not affect her personally, she thinks in terms of the future, and it is not necessarily setting a precedent but if he is allowed 18 additional feet for a variance then what about future developers. Ms. McMillan said she thinks four (4) or five (5) feet is not unreasonable but she thinks 18 feet is really excessive.

Helen Schelts, 129 North High Street, Smyrna came forward to speak. Ms. Schelts stated that she does not agree because she tried one time to get a

five (5) foot variance and was turned down. Ms. Vinc asked what the request was for. Ms. Schelts said it was for a porch.

Mr. Braun clarified that there were 15 townhouses in the original plan.

Mrs. Ennis stated that there were 15 total lots but there were 11 townhouses as you entered the subdivision and now there are 13 townhouses there.

Commissioner Newnam asked for clarification that Council approved this subdivision without recommendation from the Department of Transportation. Commissioner Neizer stated that can happen. Commissioner Slaughter said that for more than six (6) years, it is his understanding through things that he has read – research of past developments, there have been times when this body makes a recommendation when Mayor and Council has already approved the subdivision. Commissioner Slaughter said it will have to go through the PLUS program before the Town actually accepts and approves the plan for recordation. He said if the Town's Engineer tells Mr. Marcum they recommend he does this for stormwater and he does this for sewer, he may lose lots. Commissioner Slaughter said or if DelDOT comes back and says it does not work. Commissioner Newnam said with stormwater management, street access, entrances, exits, etc... you may not even have had this variance problem or issue if these items had been addressed.

Commissioner Neizer stated in most cases you will have a traffic impact study. He said that so many times these plans come through and still have to go through the State Fire Marshal and the local fire department before they are even approved.

Ms. Vinc stated that when Mayor and Council reviews a subdivision plan essentially what they are doing is approving the concept; their approval is contingent upon the applicant receiving the approvals from the various agencies. Ms. Vinc stated this is something the Town has been wrestling with for a while now - do we ask the applicant to make a preliminary subdivision submission where Planning and Zoning would make a recommendation and Mayor and Council would approve the concept, then come back to Mayor and Council once they have received all of their approvals for final subdivision approval. Ms. Vinc said there are a lot of times that when the Planning and

Zoning Commission or Mayor and Council approve a subdivision, by the time it goes through the year long process of getting the necessary approvals, the subdivision can change completely.

Commissioner Newnam stated he would hate to sit on Council and think that he has approved a subdivision and a year later it does not look like anything that he had approved.

Commissioner Carter stated that generally the only thing that is going to happen is that you will lose lots.

Commissioner Newnam said in reading the minutes, and doing a little research he does not see stormwater management, and maybe that is not where the entrance should come out. He said we are not sure that is where DelDOT is going to say the entrance should come out.

Ms. Stombaugh asked if visitors are permitted to speak under New Business on the agenda. Commissioner Neizer stated yes she could speak then. Ms. Stombaugh said she thinks what she wants to say fits under the title New Business, but maybe the Commissioners could tell her for sure. Ms. Stombaugh stated that what was just said has been a very big concern of hers. She said she thinks we have been doing things backwards, putting the cart before the horse, and it has to be costing the developers and builders a lot more money to keep going back and doing these plans. Ms. Stombaugh said that what Ms. Vinc just said makes far more sense to her and it needs to go through Planning and Zoning to make that happen. Ms. Stombaugh said there have been so many times that she has sat here at meetings before she became Mayor, and she heard something come up to Council and they say the staff recommends it, it's in line the Comprehensive Plan, and then Council just passes it. She said she has talked to a couple of Councilmen; they have never seen a Comprehensive Plan let alone read it, so it is a big concern. Ms. Stombaugh said she feels things have not been going in the right, and what you said tonight, she thinks really makes sense. Ms. Vinc stated that she had made copies of the Comprehensive Plan and gave them to Council already. Ms. Stombaugh said we'll discuss that – Bill Pressley. Commissioner Neizer said thank you, but he had to laugh when she said they have not read them, it is like going down the road blindfolded. Ms. Stombaugh said she had one in particular tell her he had never seen it, and

she was like, you sat up there and said it was in line with the Comprehensive Plan and then voted on it!

Commissioner Smith said she heard tonight that some people feel the variance requests for lots 1 and 2 are too big. She asked if the developer were to push the lots back further, what would everyone recommend be done with the open space that would be created. Commissioner Smith said you probably do not want some type of park area because then you are inviting unwanted people just to be hanging around or so. Ms. McMillan stated she would like to see grass planted there.

Commissioner Slaughter said he wanted to talk in general about property in Smyrna so we can understand how we and how he, personally look at variances. He said this body has been to different network and workshops, Urban America, different things, trying to understand how towns really grow and the density level and how it operates. Commissioner Slaughter said fortunately we have had a lot of growth and that can be taken different ways. He said unfortunately maybe it was not managed in the direction that could have been a little more beneficial to our Town. Commissioner Slaughter said it takes change; it takes change for this body to change ordinances with growth because you look at a parcel of property and you say how do I build on this parcel? He said a builder spends a tremendous amount of time and effort, and the Town spends a tremendous amount of time and effort trying to help put something on this property that is beneficial to our town 25 or 50 years from now. Commissioner Slaughter said density is a big issue and it has been a big challenge for many of us, but as we take recommendation from the town staff we look at that as what best fits in this area, does the builder have the opportunity to do something different, can he zone it R-3. Commissioner Slaughter said it is his understanding with this application the developer met with town staff and our town staff tried to sell him on taking this from Manufacturing. He said he can remember being a kid playing in that field, but growth is here and we have to control it and make change. Commissioner Slaughter said understand that when this body looks at this application, we are also following an Ordinance and a Charter, and trying to understand what best fits. He asked could this go R-3, could this gentleman put low income housing there, how many apartments could he put there, etc... Commissioner Slaughter said these are issues that we look at as well. He

said he wanted everyone to understand this so they know that this body does not just grant variances, we have recommendations and at the same time use our best decision that best fits this property. Commissioner Slaughter said he has concerns, but he also knows that there are going to be professionals looking at this and they are going to be making decisions also about what best fits this area. Commissioner Slaughter said they try to do what is right and they try to follow the Ordinance and Charter, and sometimes the Ordinance and the Charter are not clear and a builder spends a tremendous amount of money before two and a half to three years later they say you cannot do that. He asked is it the builders fault or is it our town not being educated and trained enough to make that decision.

Commissioner Smith made the motion to approve application A0703 as stated in the planning report from staff, and that the letter from Lorraine Steele be used as Exhibit A. Motion was seconded by Commissioner Slaughter. Motion passed with Commissioners Newnam, Slaughter, Neizer, and Smith voting for.

Commissioner Newnam stated he voted for the variance requests because the variances requested are the minimum variance for the reasonable use of the land and will remain in harmony with the neighborhood as it so sets, and should be in line with the Comprehensive Plan.

Commissioners Slaughter and Smith stated they voted for the variance requests for the same reasons.

Commissioner Neizer stated he voted for the variance requests because he believes it is in the best interest of the Town, it is in line with the Comprehensive Plan, it has been before the many residents of that area and many of their request will be met, it still has to be approved by the governing agencies – especially DelDOT, and if anybody gives us a negative or a thumbs down he said he believes it will come back to us anyway.

Commissioner Slaughter made the motion to close the Board of Adjustment hearing. Motion was seconded by Commissioner Smith. Motion passed with Commissioners Newnam, Slaughter, Smith, and Neizer voting for.

NEW BUSINESS

Commissioner Neizer stated he wanted Chief Embert to give a brief presentation on cul-de-sacs. Chief Embert stated he has a concern with one of the streets in Smyrna. He said this was done before he took office. Chief Embert said he is referring to VanBuren Court which is off of Mount Vernon Street. He said that street is very narrow and he has been by there on several occasions in the evenings and there is a box van parked on one side and an SUV on the other side which leaves the fire department very little room. Chief Embert said the fire department is very persistent on street width. He said to set their ladder truck they need 20 feet in the middle of the street. Chief Embert said as far as he can remember no chief has busted out a window of an automobile to get to a hydrant, but he will do it if they are in the way. He said he would like the cooperation from the Town to make road widths wider for the fire department. Chief Embert said he would also like is there any way, is it this body or does he need to approach Council with this, that we can reduce the parking to one side of VanBuren Court. Chief Embert passed around pictures of the area showing the vehicles in the way. He said each unit has a garage and one parking space on the street in front of the unit.

Commissioner Neizer stated that they have to ask Council to review this area and make the stipulations and write to the police department that they have got to police this thing. He said not only that cul-de-sac but any other cul-de-sac.

Commissioner Carter stated that he is not sure when this occurred but the standard street width in Smyrna is 32 feet. He said obviously somebody gave them the right to reduce that.

Ms. Vinc stated that she would like to make a recommendation that the Board of Adjustment and the Planning and Zoning Commission make a motion to recommend Council review this and then she will write a memo from both bodies to Mayor and Council for their next meetings packet. She said she would also include the pictures that Chief Embert brought tonight.

Ms. Stombaugh stated that she has spoken to the Commissioners before about this. She said sorry Rodney, but we've got another development coming that is going to be the same situation in Spruance City. Ms.

Stombaugh said not only the width of the road is a problem but our Ordinance, I asked before and nothing has been done, so I am going to ask you guys if you will make it a recommendation to be done as soon as possible. She said we need to do an ordinance change that in the ordinance you can have one and a half parking spaces when you have a situation like that. Ms. Stombaugh said that is the other big problem over there, because there is very few homes today that have one car so as close as those townhouses are you do not have space in between the townhouses where you can park a second car. She said the result is there is one car in the driveway, one on the street, and then if you have visitors there is no place for them to park. Ms. Stombaugh said especially the area that the Commissioners were talking about, that area is so congested. She said that we have to do an ordinance change and if it is done tomorrow she does not think it is soon enough. Ms. Stombaugh said the zoning ordinance for a mobile home park requires two (2) parking places per unit plus an overflow area. She said we have this for a mobile home park but not a housing development, and this is bizarre to her.

Commissioner Slaughter stated the ordinance will have to be changed. He said all of the safety agencies have to approve all of these projects, and when they approve it they are all following an ordinance. Commissioner Slaughter said he wanted to go back to Spruance City, he was not sure if he could remark about that because it is his project but he will. He said: a) if you look at his project, Juanita Court, he wanted to go on record he has never, ever talked about that project. Commissioner Slaughter stated it is the only project that he has. He said he took Spruance City and took it to a different level. Commissioner Slaughter said: a) each one of those townhouses have double parking plus a garage; b) the cul-de-sac in this development is 32 feet wide in the front and goes back to 50 feet; and c) he has more open space in this project than he does housing. Commissioner Slaughter stated these are all facts. He said this is what designing is all about, that is what taking a vision of where you want your town to go and what you want to see, and making something of a piece of property that may or may not meet requirements. Commissioner Slaughter said that is where our town has to have that vision to say what best fits, and you still have to follow an ordinance and you still have to follow a charter however you have to have the passion. He said that is the key. Commissioner Slaughter stated he took that to that level in Spruance City.

Ms. Stombaugh clarified that those units would have two and a half parking spaces. Commissioner Slaughter clarified that each unit will have three parking spaces. Ms. Stombaugh said that when it was presented they had said each unit would have a garage and a single driveway. Commissioner Slaughter said what they meant was each unit will have a garage and over 40 feet of driveway, and he asked how many cars can you fit in 40 feet.

Ms. Stombaugh stated that this is why she ran. She said she does not know what has happened in the past but there have been many mistakes made, and she is here trying to make sure that those mistakes are not made again.

Commissioner Newnam stated that he appreciated the Mayor's comments but a couple things: 1) we are getting ready to go into reorganization pretty soon; and 2) he thinks we should be very careful on shot gunning because he believes Madame Mayor that is what created part of the problems that we have got. Commissioner Newnam stated that a mistake made today is for our great-great grandchildren to live with. He said we better make sure what we are doing is right and we better not say two and a half is the answer when we find out it is not the answer. Commissioner Newnam stated what is the answer is that we, the Planning and Zoning Commission and the Board of Adjustment, recommend to the Mayor and Council for public safety that the recommendation of the Fire Chief be taken seriously and that parking either be limited or removed, and that it be enforced by posting and proper marking. Commissioner Neizer asked if that was a motion. Commissioner Newnam stated that was a motion. Motion was seconded by Commissioner Slaughter and carried unanimously.

Commissioner Neizer stated that he wanted to speak about stormwater management areas. He said we almost lost a young man the other night in a stormwater area. Commissioner Neizer said so many time the Commissioners ask if they are going to be fenced. He asked Chief Embert to elaborate on this subject. Chief Embert stated this is one thing that the Citizens' Hose Company does support. He said he personally does not understand how we can have an ordinance that requires someone to fence in their backyard for a swimming pool but yet you let a developer put in a retention pond that could be as deep as six (6) feet out in the middle of an open development. Chief Embert said another concern they have is that the

pipings where it would dump into these retention ponds does not have any screening and are open to any child that would like to walk into them.

Commissioner Newnam made the motion that the Planning and Zoning Commission and Board of Adjustment make a recommendation to Council in public safety that the retention ponds be fenced and that the pipes be properly secured by fencing or grating to not allow children to enter. Motion was seconded by Commissioner Faulkner and carried unanimously.

ADJOURNMENT

Commissioner Newnam made the motion to adjourn, seconded by Commissioner Carter. Meeting was adjourned at 9:25 p.m. by unanimous vote.

vlh